

VACATED pursuant to the #27
Order entered 02/25/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

GENE GAYLOR,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-00258

GHASSAN Y. DAGHER,

Defendant.

MEMORANDUM OPINION AND ORDER

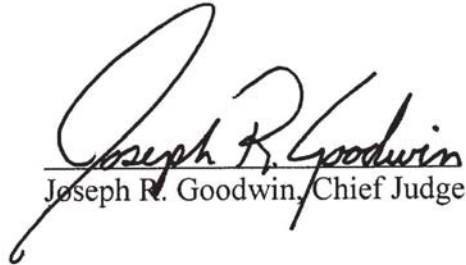
This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court **GRANT** the Defendant's Motion to Dismiss Plaintiff's Complaint [Docket 10] and **DISMISS** this action for failure to state a claim upon which relief can be granted.

Neither party has filed objections to the Magistrate Judge's proposed findings and recommendations. The failure to object to a magistrate judge's report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Indeed, it is clear from the Magistrate Judge's report and the face of the record that the plaintiff has failed to state a plausible claim for relief. *See Ashcroft v.*

Iqbal, 129 S. Ct. 1937, 1949-50 (2009). Therefore, the court **ADOPTS** the findings and recommendation of the Magistrate Judge, **DISMISSES** the plaintiff's Complaint [Docket 1] for failure to state a claim upon which relief can be granted, and **DIRECTS** that this action be removed from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 7, 2011


Joseph R. Goodwin, Chief Judge